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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 09/830,529 | 07/30/2001 | Rudolf Kammereck | WSUR117373 | 9636 |

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EXAMINER

VALENTI, ANDREA M

ART UNIT PAPER NUMBER

3643

DATE MAILED: 05/16/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/830,529

Applicant(s)

KAMMERECK ET AL. *ES*

Examiner

Andrea M. Valenti

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 July 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-41 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-41 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-41 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 2,128,973 to Tisdale et al in view of U.S. Patent No. 2,198,991 to Dutton.

Regarding Claims 1, 12, and 27, Tisdale et al teaches a fruit (Tisdale page 1, first column, line 4) coated with an insect controlling (Tisdale et al page 2, first column, line 71) wax emulsion (Tisdale page 1, first column, line 19-20), but is silent on a plant protective coating of lipophilic thixotropic smectic clay. However, Dutton teaches a plant coating with a wax emulsion and lipophilic thixotropic smectic clay (Dutton page 2, first column, line 46) for preventing sunburn. It would have been obvious to one of ordinary skill in the art to modify the teachings of Tisdale et al at the time of the invention to support the wax emulsion as taught by Dutton (Dutton page 2, first column, line 48).

Regarding Claims 2, 14, and 29, Tisdale et al as modified teaches the wax emulsion has a matrix of complex hydrocarbons, an emulsifying agent and water (Tisdale page 1, first column, line 31 and column 2 line 17).

Regarding Claims 3, 8, 9, 17, 19, 20, 32, 34, and 35, Tisdale et al as modified teaches the emulsifying agent has an anionic (Tisdale et al page 1, column 2, line 26)

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lipophilic emulsifier and an ionic hydrophilic emulsifier (Tisdale et al page 2, column 1, line 39).

Regarding Claims 4, 15, and 30, Tisdale et al as modified teaches the wax emulsion has an edible synthetic oxygen containing wax, an emulsifying agent and water (Tisdale et al page 1, first column, line 13).

Regarding Claims 5, 11, 16, and 31, Tisdale et al as modified is silent on the plant protective coating has about 0.5 to 10% (weight/weight) lipophilic thixotropic smectic clay and about 90 to 99% wax emulsion. However, it would have been obvious to one of ordinary skill in the art to modify the teachings at the time of the invention through routine tests and experimentation to optimize the system for complete coverage of the fruit.

Regarding Claims 6, 18, and 33, Tisdale et al as modified teaches the matrix of the complex hydrocarbons has a wax mixture of long chain fatty acids and long chain esters (Tisdale page 1, first column, line 13 and column 2, line 32).

Regarding Claims 7, 22, and 37, Tisdale et al as modified teaches the wax mixture is a natural wax selected from Carnauba wax, Candelilla wax, Alfa wax, montan wax, rice-bran wax, beeswax, Japan wax, and mixtures (Tisdale, page 1, column 1, line 13).

Regarding Claims 13 and 28, Tisdale et al as modified teaches fruit trees, but does not specify the species of tree. However, it would have been obvious to one of ordinary skill in the art to apply the teachings of Tisdale et al to a variety of tree species since the trees are merely alternate equivalent plant exposed to harmful sun light.

Regarding Claims 10, 21, 23, and 38, Tisdale et al as modified teaches diluting the mixture (Tisdale et al page 2, first column, line 62), but is silent on the protective coating mixture diluted into an aqueous solution in a volume/volume ration of from about 1 part protective coating mixture to about 1 part aqueous solution to about 1 part protective coating mixture to 10 parts aqueous solution. It would have been obvious to one of ordinary skill in the art to modify the teachings at the time of the invention through routine tests and experimentation to optimize the system to create a non-tacky coating.

Regarding Claims 24 and 39, Tisdale et al as modified teaches the plant is treated by spraying the composition onto the surface of the plant (Dutton page 2, column 2, line 55).

Regarding Claims 25 and 40, Tisdale et al as modified is silent on the composition is sprayed with an application rate of about 100 to 500 gallons per acre. However, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings through routine tests and experimentation to achieve an efficient and complete application coverage for the plant.

Regarding Claims 26 and 41, Tisdale et al as modified teaches the composition is sprayed onto the plant multiple times (Dutton page 2, column 2, line 55).

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

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U.S. Patent No. 3,847,641; U.S. Patent No. 4,802,305; U.S. Patent No. 4,882,874; U.S. Patent No. 5,733,531; U.S. Patent No. 5,283,060; United Kingdom Patent GB 2011788; and U.S. Patent No. 2,057,413.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrea M. Valenti whose telephone number is 703-305-3010. The examiner can normally be reached on 7:30am-5pm M-F; Alternating Fridays Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 703-308-2574. The fax phone numbers for the organization where this application or proceeding is assigned are 703-306-4195 for regular communications and 703-305-0285 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-4357.

AMV
May 8, 2003



PETER M. POON
SUPERVISORY PATENT EXAMINER
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